IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE ANTONY DOMINIC

THURSDAY, THE 29TH MARCH 2007 / 8TH CHAITHRA 1929

WA.No. 832 of 2007()

AGAINST THE JUDGEMENT IN WPC.3355/2007
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APPELLANT: PETITIONER

KUNHABDULLA.M., ARABIC TEACHER,
DEVARKOVIL M.U.P.SCHOOL, P.O.THALIYIL,
KUTTIYADI, KOZHIKODE DIST.

BY ADV. SRI.KALEESWARAM RAJ

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY
SECRETARY TO GOVERNMENT,
DEPARTMENT OF GENERAL EDUCATION,
SECRETARIAT, THIRUVANANTHAPURAM.

2. THE DEPUTY DIRECTOR OF EDUCATION,
KOZHIKODE.

3. THE ASSISTANT EDUCATIONAL OFFICER,
KUNNUMMAL, KOZHIKODE DIST.

BY GOVERNMENT PLEADER SRI SANDESH RAJA

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 29/03/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

P.R.RAMAN & ANTONY DOMINIC,JJ.

W.A.NO.832 OF 2007

Dated this the 29th day of March, 2007

JUDGMENT

Raman,J.

Appellant is the petitioner in W.P.(C).No.3355/2007. He filed the writ petition seeking to issue a writ of certiorari quashing Ext.P6. Ext.P6 is a proceeding of the Assistant Educational Officer dismissing the appeal filed by the appellant/petitioner. His claim is for continuance in service till the end of the academic year, though he completed the age of superannuation on 5/10/2006. The appellant/petitioner availed leave from 25/9/2006 to 25/10/2006. He attained the age of superannuation on completing 55 years on 5/10/2006. If he wanted to continue in service till the end of the academic year as per Rule 60(a) of Part I of the Kerala Service Rules as amended, he ought to have reported for duty on 6/10/2006. Admittedly, he did not report for duty on 6/10/2006 as a result by virtue of Rule 60(c) of Part I of Kerala Service Rules, he shall be retired with effect from the last day of the month.

2. It is contended by the learned counsel for the appellant that as per Ext.P1, if an incumbent is on leave on the day he attains the age of 55 years

and fails to rejoin duty on the first working day immediately after the date of superannuation, he shall be retired with effect from the date of superannuation under sub-rule (a) of Rule 60. According to him, the date of superannuation must be something different from the date on which he attains the age of 55 years, in so far as the teachers are concerned. These arguments on the basis of the amendment brought out as revealed by Ext.P1 are not convincing. On a combined reading of the aforesaid rule, it can be seen that in case an incumbent does not report for duty on the first working day after the date of superannuation, he has to retire from the date of superannuation under sub-rule (a) of Rule 60. As per sub-rule (a) of Rule 60 it only permits a person to continue in service upto the end of the month, in which he attains the age of superannuation. Therefore, the date of superannuation referred to in the aforesaid rule should necessarily precede the extended date of retirement as contemplated under sub-rule (a) of Rule 60. If so, he has to report for duty the next working day on attainment of the age of 55 years and no other day. In this view of the matter, we do not find any reason to interfere with the judgment of the learned Single Judge.

3. It was then contended that he having worked during that period

by virtue of the interim order passed by this Court, a direction be issued to pay the emoluments attached thereof. The judgment clearly says that the prayer made by the petitioner was to leave open such question. As such the relief cannot be granted at the appellate stage.

Writ Appeal is dismissed.

P.R.RAMAN,
Judge.

ANTONY DOMINIC,
Judge.

kcv.